

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Accelerating Wireless Broadband Deployment by)	WT Docket No. 17-79
Removing Barriers to Infrastructure Development)	
)	

**COMMENTS OF THE CITIES OF SAN ANTONIO, TEXAS;
EUGENE, OREGON; BOWIE, MARYLAND; HUNTSVILLE, ALABAMA;
AND KNOXVILLE, TENNESSEE**

Tillman L. Lay
SPIEGEL & MCDIARMID, LLP
1875 Eye Street, Suite 700
Washington, DC 20006
(202) 879-4000

*Counsel for the Cities of
San Antonio, Texas; Eugene,
Oregon; Bowie, Maryland;
Huntsville, Alabama; Knoxville,
Tennessee*

June 15, 2017

Table of Contents

I.	INTRODUCTION.	1
II.	COMMENTS.	7
III.	CONCLUSION.	8
EXHIBIT A		
EXHIBIT B		
EXHIBIT C		
EXHIBIT D		
EXHIBIT E		

The Cities of San Antonio, Texas; Eugene, Oregon; Bowie, Maryland; Huntsville, Alabama; and Knoxville, Tennessee (collectively, “Cities”), submit these comments in response to the Commission’s Notice of Proposed Rulemaking and Notice of Inquiry in this docket.¹

I. INTRODUCTION.

Each of the Cities already acts to promote broadband deployment through all technologies. But unlike the Commission, the Cities must also consider and balance factors other than the needs of broadband providers. They must also consider their obligations to promote public safety; to manage right-of-way (“ROW”) capacity and congestion; to preserve unique local historic and scenic districts, neighborhoods, parks and viewsheds; and to ensure that taxpayers receive adequate compensation for private profit-making use of the ROW and other public property.

We urge the FCC not to adopt the one-size-fits-all “deemed granted” remedy or the shorter shot clocks proposed in the *NPRM/NOI* (§§ 4-22). Those proposals would not in fact promote deployment, but would instead increase public safety risks, thwart each municipality’s ability to protect unique local attributes, and result in more, not less, litigation. The *NPRM/NOI*’s proposals also clearly, and improperly, exceed the Commission’s legal authority under Section 332(c)(7), Section 253, or any other provision of the Communications Act.

San Antonio, Eugene, Bowie, Huntsville, and Knoxville are a geographically, topographically and historically diverse group of local governments, and each has its own, different experiences with wireless providers and siting processes. All share the goal of promoting the widespread availability of wireless services to their residents, businesses and

¹ *In re Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Inv.*, WT Docket No. 17-79, Notice of Proposed Rulemaking and Notice of Inquiry, 32 FCC Rcd. 330 (Apr. 21, 2017) (“*NPRM/NOI*”).

visitors. But that is not, and cannot be, the Cities' only goal. Nor should the Commission, either in this proceeding or elsewhere, hamstring the ability of local governments to respond to each of their unique land use, public safety, ROW and public property needs and interests. No provision of the Communications Act authorizes such heavy-handed FCC intrusion into local affairs.

San Antonio, with approximately 1.3 million residents, is the second largest city in Texas, and the seventh largest city in the nation. Both landline and wireless broadband from multiple competitive providers are available throughout San Antonio. In fact, both landline and wireless broadband are far more ubiquitously and competitively available in San Antonio than in many, especially rural, areas across the nation with far less demanding, and in some cases nonexistent, ROW and zoning requirements. At the same time, pursuant to Texas law and the City Charter, San Antonio has, for over a century, imposed rent-based compensation on private entities that install facilities in the City's ROW, including ROW use by telecommunications, cable and broadband providers (among others). Indeed, ROW compensation from private sector telecommunications and cable providers is the third largest source of City revenue, exclusive of the City's municipal utilities.

San Antonio has long recognized and promoted the benefits of broadband and wireless development; it has granted hundreds of collocation requests and has approved the installation of countless DAS and small cells. But the City also must balance its promotion of the deployment of these technologies with the preservation of its rich historic resources. San Antonio has over 2000 individual landmarks, 27 different locally designated historic districts, 19 sites on the National Register of Historic Places, and 5 historic missions with pending designations as UNESCO World Heritage Sites. The City has over 28 million visitors a year, and tourism is a significant part of the local economy. Because of the City's unique character and history, all

building and other structural alterations (including wireless facilities) in historic and riverfront areas are subject to review and approval.

Eugene is Oregon's second largest city, encompassing approximately 41.5 square miles, and home to over 160,000 people.² The City has a high percentage of professionals, with over one-third of the City's population having completed four or more years of college. Eugene is home to several colleges and universities, including the University of Oregon. Eugene's parks and open spaces provide tangible benefits to the City in areas such as water quality, flood protection, air quality, property values and recreation.³ The City's pristine viewsheds are protected under the City code, which was amended in light of the Telecommunications Act of 1996 regarding the siting of wireless facilities.⁴

Eugene has adopted and consistently applied its land use, zoning and ROW access ordinances, rules and policies in a manner designed to promote wireless and landline broadband infrastructure deployment while, at the same time, preserving the City's historic and aesthetic

² *About Eugene*, City of Eugene, <https://www.eugene-or.gov/1383/About-Eugene> (last visited June 13, 2017); *QuickFacts: Eugene City, Oregon*, U.S. Census Bureau, <https://www.census.gov/quickfacts/table/PST045215/4123850> (last visited June 13, 2017).

³ Earth Economics, *Nature's Value: An Economic View of Eugene's Parks, Natural Areas and Urban Forest* at 2 (2015), <https://www.eugene-or.gov/DocumentCenter/View/18659>.

⁴ In this regard, the City Code provides:

Viewshed. The transmission tower shall be located down slope from the top of a ridgeline so that when viewed from any point along the northern right-of-way line of 18th Avenue, the tower does not interrupt the profile of the ridgeline or Spencer Butte. In addition, a transmission tower shall not interrupt the profile of Spencer Butte when viewed from any location in Amazon Park. Visual impacts to prominent views of Skinner Butte, Judkins Point, and Gillespie Butte shall be minimized to the greatest extent possible. Approval for location of a transmission tower in a prominent view of these Buttes shall be given only if location of the transmission tower on an alternative site is not possible as documented by application materials submitted by the applicant, and the transmission tower is limited in height to the minimum height necessary to provide the approximate coverage the tower is intended to provide.

Eugene, Or., Code § 9.5750(7)(j).

integrity, public safety, and fair and adequate compensation for use of City ROW and other property. Since the late 1990s, the City's land use code has contained provisions specifically encouraging collocation on existing towers, buildings, light or utility poles, and water towers.⁵ Since adopting its wireless zoning ordinance in 1997, the City has granted over 240 wireless siting applications. Eugene typically works with an applicant until the designs requested are appropriate, safe, and lawful, and the process rarely gets to the point of needing to officially deny an application.

Bowie, located in Prince George's County, is Maryland's fifth largest city, with approximately 55,000 residents.⁶ In convenient proximity to Baltimore, Annapolis and Washington, D.C., Bowie encompasses about 18 square miles, which includes 1100 acres set aside as parks or as preserved open space.⁷ Bowie has over 22 miles of paths and trails, and 75 ball fields.⁸ Numerous institutions of higher education and government facilities are located near Bowie. According to the Census Bureau's American Community Survey of 2015, 50% of Bowie's adult residents have a bachelor's degree or higher.⁹ The County, not the City, has land use authority covering the siting of wireless facilities on private property within the City. The City, however, has leased portions of its property to wireless providers since the 1990s, and there are currently 13 wireless facilities installed on City property, all pursuant to lease agreements

⁵ See *id.* § 9.5750.

⁶ About Bowie, City of Bowie, <http://www.cityofbowie.org/95/About-Bowie> (last visited June 13, 2017).

⁷ *Id.*

⁸ *Id.*

⁹ American Community Survey, U.S. Census Bureau, <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk> (last visited June 14, 2017) (select "Data Tables & Tools," select "Maryland" as the state, refine your selection by "Place" and select "Bowie City, Maryland").

between the provider and the City. The City recently adopted an ordinance addressing the installation of small cell/DAS facilities in the ROW.

Huntsville, the seat of Madison County,¹⁰ is now estimated to be the third largest city in Alabama with a population of approximately 193,000.¹¹ Within the Huntsville area, residents enjoy more than 27 miles of existing greenways and trails, as well as access to the Tennessee River, with an adopted Greenway Plan guiding the development of over 180 miles of interconnected canoe, pedestrian, biking and hiking trails.¹² Technology, aerospace, and defense industries have a strong presence in Huntsville, with the Redstone Arsenal, NASA Marshall Space Flight Center and Cummings Research Park (“CRP”) located nearby.¹³ As a city of professionals, nearly 40% of the City’s adult population has completed four or more years of college, and there are a number of colleges and universities serving the Huntsville area, including the University of Alabama in Huntsville and Alabama A&M University.¹⁴ Thanks to its highly educated, motivated and skilled workforce, Huntsville has been and continues to be “forward-looking.” The continued presence and commitment of the aerospace and defense industry in the area and the development of new industry (including biotech, biomedical and pharmaceutical), as

¹⁰ *Facts & Figures*, City of Huntsville, <https://www.huntsvilleal.gov/business/city-of-huntsville/facts-figures-about-huntsville/> (last visited June 13, 2017) (“*Facts & Figures*”).

¹¹ Paul Gattis, *Huntsville Now 3rd Largest City in Alabama, On Track to Become State’s Largest*, Ala. Media Grp. (May 25, 2017), http://www.al.com/news/huntsville/index.ssf/2017/05/huntsville_surges_into_3rd-lar.html.

¹² *Trails & Greenways*, City of Huntsville, <https://www.huntsvilleal.gov/environment/parks-recreation/parks-and-nature/trails-greenways/> (last visited June 13, 2017).

¹³ *Facts & Figures*.

¹⁴ *QuickFacts: Huntsville City, Alabama*, U.S. Census Bureau, <https://www.census.gov/quickfacts/table/PST045216/0137000> (last visited June 13, 2017).

well as the research parks and educational institutions, all support—and in some cases even demand—advanced communications capabilities.¹⁵

Huntsville is not only forward-looking; it is also mindful of its past. The National Trust for Historic Preservation named Huntsville to its “2010 List of America’s Dozen Distinctive Destinations.”¹⁶ Richard Moe, president of the National Trust for Historic Preservation, has said: “Huntsville has beautifully preserved and protected so many of the diverse stories of its past, from its southern culture and heritage to its role as ‘America’s Space Capital’, and its citizens are not stopping there This designation recognizes not only their commitment to the past, but also their dedication to a sustainable future.”¹⁷

Knoxville is Tennessee’s third largest city,¹⁸ home to approximately 180,000 people,¹⁹ and is the seat of Knox County. The City covers 104 square miles, and is situated in a valley between the Cumberland Mountains and Great Smoky Mountains.²⁰ The City is home to 97 parks and approximately 2000 acres of park land,²¹ and features 18 miles of downtown

¹⁵ A brochure about Huntsville’s CRP, “one of the world’s leading science and technology parks,” notes: “CRP companies demand access to a dependable, state-of-the art telecommunications network. Huntsville was the first metro area in the USA to establish 100% digital switching and transmission facilities, and CRP companies are still among the first in the nation to access new telecom technologies.” *In re Acceleration of Broadband Deployment Expanding the Reach & Reducing the Cost of Broadband Deployment by Improving Policies Regarding Pub. Rights of Way & Wireless Facilities Siting*, WC Docket No. 11-59, Reply Comments of the City of Huntsville, Alabama at 3 n.6 (Sept. 30, 2011).

¹⁶ *Id.* at 3 & n.8.

¹⁷ *Id.* at 3-4 & n.9.

¹⁸ *Demographics*, City of Knoxville, http://www.knoxvilletn.gov/visitors/knoxville_info/demographics/ (last visited June 13, 2017) (“*Demographics*”).

¹⁹ Conventions, Sports & Leisure International, *Market and Feasibility Analysis of the Knoxville Civic Auditorium and Coliseum: Appendix G, Key Demographic Metrics* at G-1 (Dec. 17, 2015), http://www.knoxvilletn.gov/UserFiles/Servers/Server_109478/File/PublicAssemblyFacilities/kcacstudy/KCACReportAppendixG-KnoxvilleDemographics.pdf.

²⁰ *Demographics*.

²¹ *Parks*, City of Knoxville, http://www.knoxvilletn.gov/government/city_departments_offices/parks_and_recreation/parks/ (last visited June 13, 2017).

greenways along and nearby the Tennessee River.²² Nearly 30% of Knoxville’s adult population has completed four or more years of college,²³ while nearby Oak Ridge is home to one of the Department of Energy’s 5 National Laboratories, and Knoxville houses the main campus of the University of Tennessee.²⁴ The Development Corporation of Knox County encourages business development within the area, highlighting Knoxville’s status as the nation’s tenth-best city in which to do business, according to rankings released in 2008 by *Forbes* magazine.²⁵

Knoxville and Knox County have a Wireless Communications Facility Plan that lists historic districts and sites, scenic vistas, and public parks as locations to avoid. If a wireless facility is to be located in any of these areas, collocation and stealth design requirements are required. There are currently 200 free-standing towers in Knox County equipped with cellular antenna rays. Of these towers, 5 are in the Town of Farragut, 73 are in the City of Knoxville, and 120 are in the unincorporated portion of the County.

II. COMMENTS.

As their opening comments in this proceeding, the Cities attach hereto (as Exhibits A and B, respectively) their comments and reply comments filed in response to *Streamlining PN*.²⁶ The Cities also attach (as Exhibits C, D and E, respectively), and incorporate by reference, the

²² Kathleen Gibi, *Greenways Add Options for Pedestrians and Bicyclists* at 5, Knoxville Parks & Recreation Guide, (Oct. 22, 2015), http://knoxvilletn.gov/UserFiles/Servers/Server_109478/File/ParksRecreation/RecreationGuide2015.pdf.

²³ *American Community Survey*, U.S. Census Bureau, <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk> (last visited June 14, 2017) (select “Data Tables & Tools,” select “Tennessee” as the state, refine your selection by “Place” and select “Knoxville City, Tennessee”).

²⁴ *Know Knoxville: Relocation*, Knoxville Chamber, <http://www.knoxvillechamber.com/relocation> (last visited June 13, 2017).

²⁵ *Knox County Profile: Commerce and Industry*, The Development Corporation of Knox County, <http://www.knoxdevelopment.org/CountyProfile/CommerceandIndustry.aspx> (last visited June 13, 2017).

²⁶ *In re Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie, LLC Petition For Declaratory Ruling*, WT Docket No. 16-421, Public Notice, 31 FCC Rcd. 13360 (WTB 2016) (“*Streamlining PN*”).

opening comments of the City of San Antonio and the City of Eugene and the reply comments of the City of San Antonio in the FCC's *ROW NOI* proceeding.²⁷

The Cities will respond further in the reply comment round of this docket.

III. CONCLUSION

The Commission should not adopt any new rules in this docket, nor should it issue any declaratory ruling purporting to construe Section 332(c)(7) or Section 253.

Respectfully submitted,

/s/ Tillman L. Lay

Tillman L. Lay
SPIEGEL & MCDIARMID, LLP
1875 Eye Street, Suite 700
Washington, DC 20006
(202) 879-4000

*Counsel for the Cities of
San Antonio, Texas; Eugene,
Oregon; Bowie, Maryland;
Huntsville, Alabama;
Knoxville, Tennessee*

June 15, 2017

²⁷ *In re Acceleration of Broadband Deployment: Expanding the Reach & Reducing the Cost of Broadband Deployment by Improving Policies Regarding Pub. Rights of Way & Wireless Facilities Siting*, WT Docket No. 11-59, Notice of Inquiry, 26 FCC Rcd. 5384 (Apr. 7, 2011) (“*ROW NOI*”).